

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID J. SCOTT,)	
)	
Plaintiff,)	Case No. 1:06-cv-557
)	
v.)	Honorable Robert Holmes Bell
)	
M. LARABELL,)	<u>MEMORANDUM OPINION</u>
)	
Defendant.)	
)	

This is a civil rights action brought *pro se* pursuant to 42 U.S.C. §1983. On March 15, 2007, Magistrate Judge Joseph G. Scoville issued a report and recommendation (docket #20) recommending that defendant's Rule 12(b)(6) motion (docket # 14) be granted and that plaintiff's amended complaint be dismissed with prejudice because it is barred by the statute of limitations. The matter is now before the court for *de novo* review on plaintiff's objections to the report and recommendation. FED. R. CIV. P. 72(b).

Plaintiff's complaint is based on a parole eligibility report defendant Larabell wrote on April 29, 2003, which described plaintiff as being "‘manipulative and argumentative’ with prison personnel." The report and recommendation gave plaintiff the benefit of a "deemed" filing date of August 3, 2006, even though plaintiff's complaint was not actually filed until August 10, 2006, when the court granted plaintiff leave to proceed *in forma pauperis*. The deemed filing date of August 3, 2006, is months after the expiration of the three-year limitations period.

The magistrate judge found that plaintiff had not carried his burden of demonstrating an entitlement to tolling of the statute of limitations. Plaintiff's objections (docket # 21) claim entitlement to tolling pursuant to 42 U.S.C. § 1997e(a) and equitable tolling. The report and recommendation correctly found that the "foundational flaw" in the former argument is that section 1997e(a) does not apply to complaints filed by former prisoners. (docket # 20 at 5-6). The latter claim of entitlement to equitable tolling is equally meritless for the reasons specified in the report and recommendation. (*Id.* at 6-7).

Conclusion

Upon *de novo* review, plaintiff's objections will be overruled, the magistrate judge's report and recommendation will be adopted, defendant's motion will be granted, and plaintiff's amended complaint will be dismissed with prejudice.

Date: April 3, 2007

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE